

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JUN - 7 2002

In the Matter of:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-245
FM Broadcast Stations)	RM-9971
(Alberta, Virginia and Whitakers, North)	RM-10185
Carolina; Dinwiddie, Virginia and)	RM-10186
Garysburg, North Carolina)	

To: Chief, Media Bureau

PETITION FOR RECONSIDERATION

Dinwiddie Radio Company ("Dinwiddie Radio"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the Audio Division's Report and Order in the above-captioned proceeding. In the Report and Order, the Audio Division denied Dinwiddie Radio's counterproposal to allot Channel 299A to Dinwiddie, Virginia.

Dinwiddie Radio seeks reconsideration of the denial of its counterproposal on the grounds that the Audio Division may have underestimated the population of the community of Dinwiddie and because the Audio Division failed to address Dinwiddie Radio's request that additional weight should be given to its proposal because it would result in the provision of first local transmission service in unserved Dinwiddie County. In addition, Dinwiddie Radio points out that the Audio Division may have misunderstood

Dinwiddie Radio's argument that MainQuad Broadcasting, Inc. ("MainQuad") proposed an entirely new broadcast facility to serve Whitakers, North Carolina.

I. Background

Dinwiddie Radio's counterproposal was submitted in response to the Notice of Proposed Rule Making issued in connection with the petition for rule making filed on behalf of MainQuad, licensee of radio station WSMY-FM, Channel 276A, at Alberta, Virginia. In its petition for rule making, MainQuad sought the substitution of Channel 276C3 for Channel 276A at Alberta, the reallocation of Channel 276C3 from Alberta to Whitakers, North Carolina, and the allotment of Channel 299A to Alberta. Dinwiddie Radio's counterproposal requested that Channel 299A be allotted to Dinwiddie as that community's first local transmission service. Garysburg Radio also submitted a counterproposal in which it requested that Channel 299A be substituted for Channel 276A at Alberta and that Channel 276A be allotted to Garysburg, North Carolina. The Audio Division ultimately approved the Garysburg counterproposal on the grounds that the population of Garysburg is greater than the population of either Dinwiddie or Whitakers, as measured by 2000 U.S. Census data. Report and Order at 6-7.

II. The Audio Division May Have Underestimated The Population of the Community of Dinwiddie.

The Audio Division's conclusion that the provision of first local transmission service to Garysburg has priority over the provision of such service to Dinwiddie was based solely on its determination that the population of Garysburg is greater than the population of community of Dinwiddie. *Id.* The Audio Division acknowledges that Dinwiddie is a community for purposes of Section 307(b) of the Act. *Id.* at 3. However, Dinwiddie is an unincorporated community that has no ascertainable boundaries, and it is

therefore difficult to pinpoint an exact population of the community of Dinwiddie. In the Report and Order, the Audio Division relied upon population data obtained from the 2000 Rand-McNally Commercial Atlas and Marketing Guide, which indicates that the population of Dinwiddie is only 200. *Id.*

Dinwiddie Radio respectfully submits that the Rand-McNally population figures for Dinwiddie are artificially low estimates. The U.S. Census does not separately report population figures for unincorporated communities. Thus, the most recent Rand-McNally Commercial Atlas and Marketing Guide explains that population figures supplied for unincorporated communities like Dinwiddie only “refer[] to the central or built-up sections of the community” and exclude persons living in outlying areas. 2002 Rand-McNally Commercial Atlas and Marketing Guide at 136. The 200-person Rand McNally estimate relied upon by the Audio Division appears to exclude a substantial portion of the Dinwiddie community.

As Dinwiddie Radio demonstrated in its Reply Comments in this proceeding, Dinwiddie is a distinctly identifiable and thriving community. Reply Comments of Dinwiddie Radio Company at 3. Dinwiddie is the county seat of Dinwiddie County, which has a population of 24,900 (2002 Rand-McNally Commercial Atlas and Marketing Guide at 548). As the county seat, the community of Dinwiddie is home to the Dinwiddie County Courthouse, the Sheriff’s Department and the Departments of Economic Development, Health, Planning, Social Services and Transportation. It has its own Post Office and zip code. In addition, there are numerous commercial businesses, including retail establishments, banks, restaurants, medical offices, law offices and others, as well as a number of schools and churches. Reply Comments of Dinwiddie

Radio Company at 3. As the county seat for a county with a population of 24,900, Dinwiddie Radio submits that the population of the community of Dinwiddie is much greater than 200 people.

In its initial Comments and Counterproposal in this proceeding, Dinwiddie Radio tentatively proposed that the Commission use for allotment purposes the boundaries of the area Dinwiddie Radio described as the “Dinwiddie Magisterial District,” as depicted on a Virginia State Department of Transportation map, for the boundaries of the community of Dinwiddie. Dinwiddie Radio subsequently determined that the boundaries depicted on the map on which it relied do not correspond to any such magisterial district and that the Dinwiddie Magisterial District does not, in fact, exist. However, Dinwiddie Radio demonstrated that 751 people resided within the boundaries depicted at the time of the 1990 census, and that population has certainly increased since that time. Although Dinwiddie Radio does not contend that the facilities advanced in its counterproposal would provide city-grade coverage over that entire area, it is clear that the population of the community of Dinwiddie is presently much closer to (or even exceeds) 751 people than only 200 people.

III. The Audio Division Failed To Address Dinwiddie Radio’s Request That Additional Weight Be Given To Its Proposal Because It Would Result In The Provision Of First Local Transmission Service In Dinwiddie County.

A central benefit of Dinwiddie Radio’s proposal is that the allocation of Channel 299A to Dinwiddie would result not only in the first local transmission service to the community of Dinwiddie, but would represent the first local transmission service in Dinwiddie County as a whole. As Dinwiddie argued in its Reply Comments, the lack of any local transmission service within Dinwiddie County stands in stark contrast to the

Commission's obligations under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. §307(b)), which provides that "the Commission shall make such distribution of licenses . . . among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." In order to implement this statutory directive, the Commission has established the following FM allotment priorities: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities 2 and 3.

Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982).

Dinwiddie Radio argued that FM allotment priorities clearly reflect a determination that preference be given to applicants that propose to serve presently underserved areas. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 15963 (1998) ("A system of priorities guides the Commission's 307(b) determinations, setting preferences for applicants proposing to establish a station in a nonserved or underserved community.").

Although Dinwiddie Radio requested that the Audio Division give additional weight to its proposal because it would result in the provision of first local transmission service in unserved Dinwiddie County (Reply Comments of Dinwiddie Radio Company at 2-3), the Audio Division failed to consider that request. Dinwiddie Radio submits that the public interest benefits of its proposal, including the public interest benefits of providing first local transmission service to an unserved county, justify the reversal of the Audio Division's decision and the allotment of Channel 299A to Dinwiddie.

IV. The Audio Division Appears To Have Misunderstood Dinwiddie Radio's Argument That MainQuad Proposed An Entirely New Broadcast Facility To Serve Whitakers, North Carolina.

In its Reply Comments, Dinwiddie Radio argued that MainQuad's proposal to relocate WSMY-FM from Alberta, Virginia, to Whitakers, North Carolina, should be treated as a request to allot an entirely new broadcast facility to Whitakers. Reply Comments of Dinwiddie Radio Company at 10-11. However, it appears that the Audio Division dismissed this argument based on the mistaken belief that Dinwiddie Radio was asserting that MainQuad's present allotment in Alberta was not mutually exclusive with its proposed allotment in Whitakers. Report and Order at 2 & n.3.

Dinwiddie Radio does not contend that MainQuad's present allotment in Alberta can coexist with its proposed allotment in Whitakers. Rather, Dinwiddie Radio's argument is based on the lack of 60 dBu service overlap between MainQuad's facilities in Alberta and its proposed facilities in Whitakers, the considerable distance between Alberta and Whitakers, and the significant upgrade that MainQuad proposed for its Whitakers facility (from a modest Class A to a much more powerful Class C3). As a consequence, Dinwiddie Radio requests that if on reconsideration the Audio Division determines that the public interest would be better served by the allotment of a new Class C3 facility to Whitakers, such an authorization should be awarded through the Commission's auction process as a new station allotment.

V. Conclusion

For the reasons set forth herein, Dinwiddie Radio respectfully requests that the Audio Division reconsider its decision in the Report and Order and grant Dinwiddie Radio's counterproposal to allot Channel 299A to the community of Dinwiddie.

Respectfully submitted,

DINWIDDIE RADIO COMPANY

By: 

Meredith S. Senter, Jr.

John D. Poutasse

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809
(202) 429-8970

June 7, 2002

Its Attorneys

CERTIFICATE OF SERVICE


I, Rochelle D. Johnson, do hereby certify that a true copy of the foregoing Petition for Reconsideration was mailed by first-class U.S. mail, postage prepaid, this 7th day of June 2002, to the following:

Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801
(Counsel for Garysburg Radio)

John M. Pelkey
Garvey, Schubert & Barer
1000 Potomac Street, NW, 5th Floor
Washington, DC 20007
(Counsel to MainQuad Broadcasting, Inc.)

John A. Karousos*
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

R. Barthen Gorman*
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554


Rochelle D. Johnson

* Via Hand-Delivery